SUPREME COURT, U.S.

73-1350

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IN THE

Supreme Court of the United States

Spring Term, 1974

No. 73-3150

HILLCREST PRESBYTERIAN CHURCH OF SEATTLE
Petitioner,
v.
PRESBYTERY OF SEATTLE, INC.
Respondent,
BOARD OF NATIONAL MISSIONS OF UNITED PRESBYTERIAN CHURCH
Respondent,
v.
HILLCREST PRESBYTERIAN CHURCH OF SEATTLE
Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND COURT OF APPEALS OF WASHINGTON, DIV. II

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QUESTIONS PRESENTED

1. Should the Washington Supreme Court be permitted to follow *Watson v. Jones*, 80 U.S. 679 (1872), as it has done continuously for nearly seventy-five years?

2. Did the Washington Supreme Court correctly apply the *Watson* "rule of action," as recently approved by the *Hull Church* case, by accepting as "final and binding" the

decisions of Respondent Presbytery of Seattle, Inc. with respect to the control of the Hillcrest Presbyterian Church of Seattle and its property?

3. Even if the Washington Supreme Court applied "neutral principles of law," would the Washington Supreme Court reach the same result because of the Articles of Incorporation and the By-laws of the Hillcrest Church?

STATEMENT OF THE CASE

Much of the Petitioner's Statement of the Case (Pet. 6-9) is inaccurate. Petitioner fails of include many facts that are essential to a full understanding of the issues (Pet. 6-9). The following briefly corrects those problems.

I. Nature of the Case

Petitioner is inaccurate (Pet. 7-8) in stating the dispute is over ownership of real and personal property; the dispute is basically whether Petitioner may divert church properties to its own use, contrary to the Constitution of the United Presbyterian Church, the Orders of Presbytery and the Articles of Incorporation and By-laws of the Hillcrest Presbyterian Church.

II. Summary of the Facts

Contrary to Petitioner's contention (Pet. 6-9), the Hillcrest Church, was a regular member of the United Presbyterian Church in the United States of America, initiated by the First Presbyterian Church of Seattle (R. 593), organized by the Presbytery of Seattle, and an integral part of the Presbyterian organization. The evidence emphasized the participation of Hillcrest Church as a full fledged member of the United Presbyterian Church and of the

Presbytery of Seattle. The pastor was installed by the Presbytery (R. 157); he was a member of Presbytery (R. 159); meetings of Presbytery were held at the Hillcrest Church (R. 160); the church sent voting delegates to Presbyterian meetings (R. 161, 167, 168); minutes of the ruling boards of the church were regularly submitted for approval by Presbytery (R. 164); every officer ordained in the church for 20 years took oath to support the United Presbyterian Church (R. 212); the church paid its usual per capita support tax of the United Presbyterian Church (R. 800); and approval by Presbytery of all mortgages or sales of church property were required and were requested by Hillcrest Church (R. 811; Ex. 20, Sec. 62.08).

The Hillcrest Church, as an ecclesiastical member of the United Presbyterian Church, was dissolved by Presbytery at its August 20, 1968, meeting after one year of continued statements by Hillcrest Church officers that it had renounced all jurisdiction of Presbytery and its refusal to meet with a representative of Presbytery. This decision of Presbytery was not appealed, was in fact ignored (R. 829).

Hillcrest Church attempted, via the trustees of the church, to amend the Articles of Incorporation (R. 100) in September 1967, so as to eliminate all reference to and jurisdiction of the United Presbyterian Church. The trustees of the appellant Hillcrest Church have but extremely limited authority. Primary authority over a particular church is vested with the Sessions, not with the trustees or congregation. Section 41.08, Form of Government, Book of Order (Ex. 20, 21) provides that:

"The Church Session shall have authority over all

> the affairs and activities of the particular church, except such matters as may, by this form of government, be specifically accorded to the pastor, to the congregation or to a higher judicatory."

The authority of the trustees is set forth in Section 62.08, Form of Government, which provides that:

> "Whether by civil law the trustees of a particular church . . . are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the Session, and their authority in respect to the selling, mortgaging and leasing of real property shall be subject also . . . to the permission of Presbytery as herein provided."

The original Articles of Incorporation (Ex. 30) and By-laws (Ex. 31) were specific as to Hillcrest Church being a part of and subject to the jurisdiction and Constitution of the United Presbyterian Church. These documents provided, in fact, that no amendments could be had which were not in conformity with the Constitution of the United Presbyterian Church. These original Articles and By-Laws were adopted when the Hillcrest Church was organized as a member of the Presbytery of Seattle and governed the church for 27 years preceding September 1967 (R. 148).

ARGUMENT

I. Summary of Argument

Petition for a Writ of Certiorari to the Supreme Court of the State of Washington should be denied by this court because: (1) the Washington Supreme Court did not decide a substantial federal question which has not already been decided by this court, (2) the decision of the Washington Supreme Court is in accord with the applicable

decisions of this court, and (3) there are no other "special and important reasons" for granting certiorari in this case.

The Washington Supreme Court, in refusing review of the Washington Court of Appeals, Division Two, concurred with the rationale and rules announced earlier by the Supreme Court in *Presbytery of Seattle v. Rohrbaugh*, 79 Wn.2d 367, 486 P.2d 615 (1971), a decision for which this court was requested to issue a Write of Certiorari and which was denied (Supreme Court of the United States, October Term, 1971, #71-563, Denied March 20, 1972).

If the Washington Supreme Court had decided to depart from *Watson v. Jones*, 80 U.S. 679, 20 L. Ed. 666 (1872), and rely on "neutral principles of law", the result in this case would be the same.

II. Argument in Support of Judgment

A. *Washington Supreme Court Correctly Followed Decisions of this Court*

The role of the civil courts with respect to questions concerning church discipline or faith, ecclesiastical law, or use of church property has been before the United States Supreme Court on several occasions, recently in 1969 in *Presbyterian Church v. Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601, and the leading case *Watson v. Jones*, 80 U.S. 679, 20 L.Ed. 666. This court in the *Watson* case held in favor of the faction that remained loyal to the Presbyterian Church in the United States. The opinion of this court classified the three types of cases which had come before the courts, the third of which was: where the religious congregation or ecclasiastical body holding the

property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory over the whole membership of that general organization (80 U.S. at p. 722.).

This court discussed the principle of finality of ecclesiastical decisions in civil cases and concluded at pages 729-730:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their rights to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*" (Emphasis added.)

The rule of the conclusive nature of ecclesiastical decisions was adopted by the Washington Supreme Court many years ago. In *Wilkeson v. Rector, etc., St. Luke's Parish,* 176 Wash. 377, 384-5 (1934), the Washington Court stated that it is a well recognized principle of law that:

"In the absence of fraud, where the right of property

> in a civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it in its application to the case before it. *Hendryx v. People's United Church,* 42 Wash. 336, 84 Pac. 1123, 4 L.R.A. (N.S.) 1154; *Watson v. Jones,* 80 U.S. 679, 20 L. Ed. 666."

The most recent consideration by the Washington Court is *The Presbytery of Seattle, Inc., et al v. James R. Rohrbaugh, et al,* 79 Wn.2d 367 (1971). Upholding the trial court in an unanimous opinion, this 1971 case quotes the significant language of *Watson v. Jones,* then goes on to affirm the lower court with these words (page 373):

> "This court has adopted the rule of *Watson v. Jones,* supra, in cases of this kind, having held in *Herman v. Tieton View Community Methodist Episcopal Church,* 33 Wn. 2d 716, 207 P. 2d 699 (1949), that in absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive. The propriety of this rule was again recognized in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hall Memorial Presbyterian Church,* supra (393 U.S. 440, 21 L. Ed. 2d 658, 89 S.Ct. 601) (1969). We see no reason to abandon it.
>
> "The appellants are not, as they contend, the record title holders of the property. The record title is in the United Presbyterian Church of Seattle, a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a session which must act in accord with that discipline. The appellants have withdrawn from that

church, but according to the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the session who withdraw forfeited their right to govern the affairs of church when they did so, according to the decision of the highest tribunal to which an appeal was taken, and consequently the appellants had no right to control the use of the property.

B. ***Response to Petitioner's Argument***

1. Decision does not abdicate law to ecclesiastical authority.

Contrary to the assertions of Petitioner (Pet. 10), the determination as to whether the Hillcrest Church was a connectional church, was made by the trial court — not by the Presbytery. Inherent in *Watson v. Jones,* supra, is the proposition that the court first determine in which class of religious organization the church group belongs. From the evidence produced at the trial, the trial court specifically found, Findings of Fact IV "The church government is the Presbyterian form of government, with the various components thereon constituting one united sovereign church, and not independent or congregational (R. 8). The trial court did not abdicate this duty to either of the parties.

2. Respondent's dissolution of the petitioner was not a civil law matter.

Prior to and during August 1967, representatives of respondent, Presbytery of Seattle (hereinafter "Presbytery") attempted to meet with representatives of the Hillcrest Church and advise them of proper procedures under the Constitution of the United Presbyterian Church (R.

573). The efforts were rebuffed (Ex. 45, 46, 47, 48, 49, 50, 51, 52 and 53) and a letter was sent by Hillcrest Church to Presbytery advising that the church renounced the jurisdiction of the United Presbyterian Church and of the Presbytery of Seattle (Ex. 57).

Presbytery, in response, at its August 20, 1968, meeting, ruled, after proper notice (R. 570), that the Hillcrest Church was dissolved under Form of Government 42.08 (Ex. 20) and that the church was to deliver possession of all church properties to Presbytery (Ex. 68) (Ex. 20-62.11). The action of Presbytery, was not appealed to a higher judicatory within the United Presbyterian Church to which it has been taken (Ex. 20).

This in no way pertained to the civil corporation of the Hillcrest Church. The dissolution was of the ecclesiastical congregation — a termination of Hillcrest Church as a church body in the Presbyterian family. Flowing from such action, under the provisions of the Constitution of the United Presbyterian Church in the U.S. of A. (Ex. 20-62.11), was the requirement that the still-in-existence civil corporation relinquish possession, title and control of the church property.

3. The present case is not a case of national importance.

Contrary to the impression created by Petitioners (Pet. 13), there is not a revolt brewing within the United Presbyterian Church. As of January 1972 there were 8,812 churches within the United Presbyterian Church. Since 1967 few churches, probably less than eight, have been involved in litigation over church property. To extrapolate

eight churches into "many hundreds of churches" requires substantial imagination.

The Petitioner misrepresents that 300 churches have separated from the United Presbyterian Church in the United States of America (Pet. 14). No such activity affects the respondent United Presbyterian Church. A schism over theology does affect an entirely unrelated church organization, *not* the United Presbyterian Church in the United States of America.

The national church involved in the present case is the same one involved in *Watson*. The principles of *Watson* have guided the United Presbyterian Church since 1872, just as those principles have guided Presbyterian churches in the State of Washington since 1898. As the Washington Supreme Court stated in its unanimous opinion in *Presbytery of Seattle v. Rohrbaugh, infra:*

> "This Court has adopted the rule of *Watson vs. Jones*, supra, in cases of this kind . . . We see no reason to abandon it" 79 Wn.2d at 373, 486 P.2d at 619.

This decision by the Washingto Supreme Court is neither unusual nor of national importance. It simply is the seventh time since 1898 that the Washington Court has elected to adopt the principles of *Watson*.

4. No misrepresentation or fraud of respondent occurred.

There never was any question that (a) the civil title of the Petitioner property was in a civil corporation established by Petitioner, and (b) that such title possession and ownership was subject to the jurisdiction and control of the United Presbyterian Church in the United States of America.

The leader of the Hillcrest Church, Rev. Haldane Duff, serving as pastor to the congregation for 20 years, testified

at length as to the membership and participation of the church in the Presbytery. When asked whether officers of the church had copies of the Book of Order and Form of Government of the United Presbyterian Church for their use, Rev. Duff responded (R. 101) that such officers did have such copies and that the same were at all times available and used in the church. In the years that Pastor Duff served the church, he had ordained most, if not all, of the officers of the church who were active in 1967, and from each one he had received an affirmative response to an oath to support the form of government of the United Presbyterian Church (R. 212).

Mr. W. L. Dettlor, an ordained minister, called as a witness by the Petitioner church, advised that he had substantial background in Presbyterian law, had served as stated clerk for the Presbytery of Seattle for several years. Mr. Dettlor makes it clear in his testimony that the Presbytery had authority to dissolve the church (R. 664), several other churches having been dissolved during his affiliation with the Presbytery (R. 694), and that upon dissolution (R. 694), the property of the church reverted to the Presbytery (R. 665, 666). Dr. Dettlor also informed that official copies of the church government were sent regularly to each individual church (R. 667). He advised that every particular church was required to obtain permission from the Presbytery prior to selling or mortgaging any of its real property and that copies of this church law were furnished to the individual churches (R. 678). Finally, Mr. Dettlor confirmed that the language in the articles and bylaws of the Hillcrest Church conformed with the requirements of the Form of Government of the United Presbyterian Church (R. 692, 693).

CONCLUSION

Petitioner has shown no "special and important reasons" for this court to grant its Petition. There is no federal question of substance in this case which has not already been determined by this court. Nor does the decision of the Washington Supreme Court conflict with applicable decisions of this court or of other state courts. On the contrary, the Washington Supreme Court based its decision on the *Watson* "rule of action" one of the three approaches to resolving church property disputed permitted by *Hull Church*, and other relevant decisions of this court.

Even if this court were to overrule *Watson*, *Hull Church* and other concurring opinions by requiring the application of "neutral principles of law" to resolve church property disputes, the result in the present case would not change.

For the foregoing reasons, the Petition should be denied by this court.

Respectfully submitted,

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